IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3035 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANTILAL CHUNILAL MODI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3035 of 2001

MR JASHWANT SHAH FOR MR NIRAV C THAKKAR for Petitioner

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/09/2001

ORAL JUDGEMENT

1. In exercise of powers conferred under Section 3 (2) of the Gujarat Prevention of Antisocial Activities Act, 1985 ('the Act' for short), the Commissioner of Police, Rajkot City, Rajkot, vide order dated February 8, 2001, Annexure A to the petition, detained the petitioner

- detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act and as five cases under the Bombay Prohibition Act are registered against the petitioner which are pending for trial and statements of two independent witnesses were recorded the detaining authority considered the activities of the detenu as prejudicial to the maintenance of public order and therefore powers under section 9 (2) of the Act were exercised by the detaining authority by not disclosing identity of the witnesses and detained the petitioner - detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention by setting the detenu at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Jashwant Shah, learned advocate for the petitioner has restricted his arguments to the point that the detaining authority has not supplied legible copies of the documents on the basis of which order of detention came to be passed. Besides this, the privilege claimed under section 9 (2) of the Act is not genuine and therefore on both these counts, the order of detention cannot be sustained and therefore he urged that the petition may be allowed and the petitioner - detenu be set at liberty forthwith.

5. Though reply affidavit is not filed, Mr. K.T. Dave, learned AGP has opposed the petition by making oral submissions. He however does not dispute the factual aspects of not supplying legible copies of the documents on the basis of which detention order came to be passed. He also conceded the fact that privilege claimed under Section 9 (2) of the Act is not satisfactorily explained by filing reply affidavit of the detaining authority. He, therefore, requested to pass appropriate order.

6. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the documents annexed therewith and also considered the order of detention.

7. On having perusal of the bunch of documents, it is seen that pages 21, 24, 49, 50, 51, 71, 87 and 97 are illegible as some of the liens in the said documents cannot be read. These are documents pertaining to five cases under the Bombay Prohibition Act registered against the petitioner. Therefore non-supply of legible documents to the detenu, his right to make effective representation is seriously prejudiced. Therefore, on this ground the order of detention is bad in law and cannot be sustained.

8. So far as other two grounds, that is, statements of two independent witnesses are concerned, though privilege is claimed by not disclosing identity of those witnesses, it has not been substantiated by the detaining authority by filing affidavit in reply. There is nothing to show as to how the privilege is claimed and why the identity of the witnesses is not disclosed and in what manner fear was experssed by the witnesses. Therefore, privilege claimed by the detaining authority is not genuine. So on this ground also the order of detention is vitiated and therefore the petition deserves to be allowed.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of detention dated February 8, 2001 passed against the petitioner detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

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